

CNRMHSN040010652020

ORDER BELOW EXH. 47 IN SPECIAL (MCOCA) CASE No. 42/2020

The State of Maharashtra...

...Complainant

-Versus-

Kapil Krishna Pawar

....Accused

1] Accused No. 5 Kapil Krishna Pawar has filed first application for grant of bail under sec. 439 of the Code of Criminal Procedure in C.R.No. 553/2020 of Police Station, Islampur for the offences punishable under sec. 302, 143, 147, 148, 323, 504, 506, 120-B, 188, 269, 270, 290, 291 r.w. 149 of the Indian Penal Code, 51(Kh) of Disaster Management Act, Rule 11 of Covid-19 Rules, 142 of Maharashtra Police Act and 3(1) (i) (ii), 3(2), 3(3), 3(4), 3(5) of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred as "MCOC Act"). Accused No. 5 was arrested on 03/07/2020 and remanded to PCR till 14/07/2020. Thereafter he was remanded to Magisterial custody.

2] The facts of the prosecution case are that, deceased Santosh Rakhamaji Kadam and accused No. 5 and co-accused were acquainted with each other. Co-accused Ajit Patil has dispute with deceased Santosh on account that he was not working with his gang and there was altercation between them on 28/06/2020 at about 11.30 p.m. near hospital of Dr. Sangram Patil at Islampur. On 29/06/2020 at about 12.30 a.m. Accused Nos. 1 to 3, 5, 6 and child in conflict with law Pratik @ Pilya Suresh Patil came on motor cycle and unlawfully assembled in front of the house of informant Sharad

Vasant Kadam situated at Ninainagar Chowk. Accused No. 5 and co-accused No. 2 unlawfully entered in the prohibitory area inspite of externment order against them. Co-accused Nos. 2, 3, 5, 6 and child-in-conflict with law i.e. accused No. 4 abused deceased Santosh and assaulted him by fists and kicks. They caught hold him and accused No. 1 assaulted him on his chest and stomach by means of knife. Due to which he sustained grievous injuries. Thus accused Nos. 1 to 7 committed criminal conspiracy and thereby committed murder of deceased Santosh. Hence the informant lodged the report.

3] Perused the application, say of learned A.P.P. and documents on record. Heard learned advocate Shri. B.R. Gaikwad for accused No.5 and learned A.P.P. for state at length. The charge-sheet came to be filed on 23/12/2020 before Special Court under MCOC Act.

4] According to learned advocate for accused No. 5 he has been falsely implicated in the crime. He has no nexus with the crime. The offence under MCOC Act is not applicable. No evidence collected to show that accused No. 5 has gained movable or immovable property by use of threat or other unlawful means. There is no compliance of section 18 of MCOC Act. Accused No. 5 is not involved in any crime. He is not member of organized crime syndicate. So he is entitled for bail. He is ready to abide conditions imposed, if any. After completion of investigation charge sheet came to be filed in the Court. Accused No. 5 is innocent and falsely implicated in this crime. He has permanent place of residence at Islampur, Tal. Walwa, Dist. Sangli. There is no apprehension of tampering of witnesses as charge

sheet came to be filed. He is law abiding person. He is not likely to flee from justice, if released him on bail. Co-accused No. 6 has been released on bail, so accused No. 5 may be released on bail on the ground of parity. Therefore, he prayed for bail of accused No. 5.

5] The learned Spl. P.P. resisted the application by filing say (Exh.49) stating that alleged offences are of serious nature. Accused No. 5 is habitual offender and 4 offences were registered against him in various police stations. Accused No. 5 is member of the gang and committed conspiracy with gang leader i.e. accused No. 1 and other co-accused. There is possibility of tampering of evidence by accused No. 5. There is prima facie material to show the complicity of accused No. 5 in the crime. Hence, ld. Spl. P.P. prayed for rejection of application.

6] Learned Spl. P.P. for state vehemently submitted that name of accused No. 5 mentioned in the report. During the investigation it was transpired that accused No. 5 is the member of the gang whose leader is accused No. 1. Four offences are registered against accused No. 5 as per details given by I.O. in his say (exh.49). Thus, provisions of MCOC Act are attracted.

7] Learned Spl. P.P. further argued that the compliance of section 18 of the MCOC Act is proper. Whether sanction u/s 23 of MCOC Act is legal or not will be decided on the basis of evidence on record.

8] On going through the rival arguments of both the parties,

whether at this juncture it is necessary and proper to decide whether section 3 of MCOC Act is applicable and there is proper compliance of section 18 and 23 of MCOC Act. The learned advocate for accused No. 5 vehemently submitted that, accused No. 5 is not member of gang of accused No. 1 and he has not committed more than one offence with accused No. 1. The learned Spl. P.P. opposed the said argument on the ground that it is not the stage to consider the argument advanced on behalf of accused No. 5 on the point of applicability of provisions of MCOC Act. It is to be noted that while deciding the bail application it is not necessary to consider the merit and demerit of the case. It prima facie appears from record that informant and other witnesses have stated name of accused No. 5 in their statements under section 164 of Cr.P.C. It also appears that, there are criminal antecedents against accused No. 5.

9] It is to be noticed that for entitling the bail application there are different norms to scrutinize the case of prosecution. It is also born in mind that as per section 17 of MCOC Act there are special Rules of the evidence. However, for deciding the bail application, provisions of section 439 of Cr.P.C. are applicable.

10] On going through the FIR, it reveals that, name of accused No. 5 is not mentioned in the FIR. During the investigation it was transpired that accused No. 1 is leader and accused Nos. 2 to 7 are members of that group.

11] The approval order shows that other 4 offences have been registered against accused No. 5 at different police stations. Learned

Advocate for accused No. 5 submitted that provisions of MCOC Act cannot be invoked as two of the earlier offences have not been committed by and on behalf of gang by accused No. 5. But they are committed in individual capacity. There is no sufficient material to show the involvement of accused No. 5 in the present offence.

12] Learned advocate for accused No. 5 relied on the following case-laws.

1. Shabhana Parveen Inayatullah Shaikh Vs. The State of Maharashtra reported in 2021(3) Crimes 349 (Bom.)
and
2. The State of Maharashtra Vs. Jagan Gagansingh Nepali in Criminal Appeal No. 20 of 2011.

I have carefully gone through the above case laws. With great respect to the Hon'ble High Court, the facts of the present case and the facts of case mentioned in the case laws cited supra, are not similar. Therefore, aforesaid case-laws are not applicable to the present case.

13] It is an admitted fact that charge sheet came to be filed before the Court. This is the first application filed by accused No. 5 after filing of charge sheet. In the facts and circumstances of the case, prima facie it appears that specific role is attributed to accused No.5. There are circumstances available on record, which prima facie indicates that said accused No.5 is involved in the alleged offence. The alleged offence is against human body and is of serious nature. The learned advocate for accused No. 5 submitted that, co-accused No. 6 has been released on bail, so accused No. 5 may be released on

bail on the ground of parity. It appears from record that accused No. 5 unlawfully entered in the prohibitory area inspite of externment order dated 07/01/2020 against him. Moreover accused No.5 is charged with committing serious offences and punishment is severe one in the event of conviction. In that view of matter the rule of parity is not applicable to accused No. 5. Moreover, there is material to show that accused No. 5 will use his liberty to subvert justice or tamper with the evidence. Admittedly, at the stage of bail, merit and demerits of the case, cannot be considered.

14] It appears from record that there is prima facie material against accused No. 5. It further appears that accused No. 5 and witnesses are residents of same place. Hence, I found substance in the apprehension raised by the ld. Spl. P.P. that there is likelihood of tampering with prosecution witnesses and evidence by accused No. 5 if he will be released on bail. It prima facie appears that there is likelihood of committing similar type of offence and there is reasonable apprehension of witnesses being tampered. Considering the above reasons, it appears that, this is not a fit case to exercise the discretion of granting bail. Hence, I proceed to pass the following order.

ORDER

Application is rejected.

Date: 30/12/2021.

Sd/-
(Rajshri P.Pardeshi)
Special Judge, (MCOC Act)
Islampur

CERTIFICATE

I affirm that the contents of this P.D.F. file are same, word to word, as per original order.

Name of the Stenographer : Shri B.M.Patil, Steno, Gr. I
Court Name : Dist. Judge – 2 & Special Judge,
(MCOC Act)
Date of Order : 30/12/2021
Signed by P.O. on : 30/12/2021
Uploaded on : 30/12/2021